Supreme Court, U.S.
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No. 89-1119

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

PATRICK A. HERRING, JR., *et al.*,
Petitioners,

v.

DELTA AIR LINES INC. and
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF AIR LINE PILOTS ASSOCIATION, INTERNATIONAL IN OPPOSITION

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QUESTION PRESENTED

Whether individual airline pilots whose seniority rights following a merger were negotiated in good faith on their behalf by their union committee which was composed of fellow employees from their own pre-merger seniority list and which was selected according to established union procedure, can compel their union to set aside the resulting collective bargaining agreement and submit the seniority terms to be rewritten by an outside arbitrator.

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OPINIONS BELOW

The United States Court of Appeals for the Ninth Circuit originally issued an unpublished memorandum decision, which is reprinted in Petitioner's Appendix ("P.A.") at 1a. The Court of Appeals later modified its original decision and redesignated it a published opinion. The published opinion, filed January 23, 1990, is reprinted in Respondent's Appendix ("R.A.") at 1a.

The unreported memorandum of decision and order of the United States District Court for the Central District of California (Kelleher, D.J.), filed May 11, 1988, is reprinted at P.A. 9a.

STATEMENT OF THE CASE

In 1986, respondent Delta Air Lines, Inc., ("Delta"), and Western Airlines, Inc. ("Western") agreed to merge. At the time, ALPA was the duly authorized collective bargaining representative under the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.*, of the pilots employed by both Delta and Western.

As part of the merger agreement, Delta agreed with Western that it would adopt certain labor protective provisions ("LPPs"). Section 3 of the LPPs required that Delta reach an agreement with ALPA to integrate the seniority lists of the Delta pilots and the Western pilots. (R.A. 10a) Section 3 further provided that if Delta and ALPA failed to agree on seniority integration, they could submit the matter to an arbitrator. Section 13 of the LPPs set forth the applicable arbitration procedure. (*Id.*)

As noted by the Court of Appeals, "[t]he integration of a seniority list involves much more than listing pilots according to the date that each began work." (R.A. 3a). To deal with these complexities, ALPA has a formal and detailed set of guidelines, known as the ALPA Merger Policies, concerning the integration of the seniority lists of pilot groups it represents. These guidelines have been in effect at all times relevant to this case. The cornerstone of the ALPA Merger Policies has been to vest the authority to determine an appropriate method of integration in Merger Committees which consist of pilots who are selected directly from the affected pilot groups. (R.A. 8a-9a). The Merger Committee for each airline's pilots is elected by the pilot group's Master Executive Council

("MEC"), the highest governing ALPA body for an airline. The ALPA MEC for each airline is elected by the pilots of that airline.

ALPA Merger Policies vest in the Merger Committees "complete and full authority to act for and in behalf of the flight deck operating crew members of their respective airlines for the purpose of compiling a single flight deck operating crew member seniority list." ALPA's national officers do not have authority to determine and impose an appropriate method of seniority integration. Furthermore, ALPA's Merger Policies provide that the Merger Committees of the affected pilot groups will not proceed to arbitration under the Merger Policies unless they cannot agree on a method of integrating their seniority lists.

After Delta announced its merger with Western, Merger Committees for the Delta pilots and for the Western pilots ("Delta Merger Committee" and "Western Merger Committee," respectively) were elected by their respective MECs to negotiate a method of integrating the seniority lists. On May 28, 1987, following negotiating meetings with each other and with Delta, the Delta Merger Committee and the Western Merger Committee reached an agreement which integrated the seniority lists. The Western Merger Committee was satisfied that it had reached an agreement which was fair and equitable and in the best interests of the Western pilots. The May 28, 1987 agreement was executed by the Delta Merger Committee, the Western Merger Committee, and Delta; no national-level ALPA officer executed the agreement. Under ALPA's Merger Policies, ALPA had a duty to support the agreement reached by the Merger Committees. Therefore, on September 21, 1987, ALPA signed a supplemental collective bargaining agreement with Delta which incorporated the integrated seniority list.

The integrated seniority list which was incorporated into the collective bargaining agreement represented a

compromise between the opening positions of the Western Merger Committee and the Delta Merger Committee. Originally, the negotiators for the Western pilots proposed integrating the seniority lists based simply on the pilots' dates of hire. The negotiators for the Delta pilots originally proposed to integrate the seniority lists based on ratios of cockpit positions (*e.g.*, B-727 captain positions). The Delta Merger Committee also proposed that in determining these ratios, pre-merger Delta pilots be credited for all of Delta's planned fleet expansion through 1992. As a compromise, the negotiating teams agreed to base seniority on ratios but to permit both of the pilot groups to share fully in all of Delta's planned fleet expansion. The agreement also contained "conditions and restrictions" that provided significant protections to pre-merger Western pilots.

Petitioners, a group of former Western pilots who were dissatisfied with the results of the seniority list negotiations, demanded that Delta and ALPA set aside the May 28, 1987 agreement and permit an arbitrator to rewrite the seniority agreement. After Delta and ALPA refused, petitioners, in August 1987, sued Delta and ALPA in the United States District Court for the Central District of California, seeking to force the defendants to permit an arbitrator to revise the seniority agreement more to petitioners' liking. In their complaint, petitioners alleged that defendants, by refusing to submit the matter to arbitration, violated the LPP's, the RLA, the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* ("FAA"), and the common law of contracts. The complaint also alleged that in negotiating the new collective bargaining agreement ALPA breached its duty of fair representation under the RLA.

In a memorandum of decision and order filed May 11, 1988, the district court granted defendants' motions for summary judgment. (*See* P.A. 9a). The court held that petitioners had no right to set aside the seniority agree-

ment or to require ALPA and Delta to permit an arbitrator to rewrite the agreement. The court also rejected petitioners' claim that ALPA breached its duty of fair representation, (P.A. 16a-17a), finding that this claim was based on "unsupported statements" in petitioners' "memorandum." (P.A. 16a).

The United States Court of Appeals for the Ninth Circuit affirmed the district court's decision. The Court of Appeals initially issued an unpublished memorandum decision, (*see* P.A. 1a), which it later modified in minor ways and published as an opinion (*see* R.A. 1a). Like the district court, the Court of Appeals held that Delta and ALPA clearly did not violate the LPPs, the RLA, the FAA or contract law by refusing to submit to arbitration the matter of integrating the seniority lists. The court also held that ALPA acted reasonably in reaching the new collective bargaining agreement and did not breach its duty of fair representation.

SUMMARY OF ARGUMENT

The Court of Appeals' decision did not offend the federal policy or RLA provisions favoring arbitration because petitioners clearly had no right under the LPPs to require Delta or ALPA to submit to arbitration the integration of the seniority lists. Delta and ALPA were the only parties with the right to seek arbitration under the LPPs and they reached agreement on integrating the seniority lists. Moreover, no issue is presented concerning ALPA's duty of fair representation, since petitioners' argument was, in the court's view, based "on only unsupported statements" which were "insufficient to survive the ALPA's summary judgment motion." (R.A. 6a)

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

I. THIS CASE PRESENTS NO IMPORTANT ISSUES OF FEDERAL LAW SINCE PETITIONERS' CLAIM THAT THEY HAD A RIGHT TO REQUIRE DELTA AND ALPA TO SUBMIT THE INTEGRATION OF THE SENIORITY LISTS TO ARBITRATION IS CLEARLY WITHOUT MERIT

Petitioners argue that the Court of Appeals' decision presents an important question of federal law because, petitioners assert, the decision was contrary to federal policy favoring arbitration. Petitioners' argument is baseless. The Court of Appeals correctly held that petitioners clearly had no right to require Delta and ALPA to submit the integration of the seniority lists to arbitration.

Section 3 of the LPPs states that if the carrier and the employees' representative fail to agree on a method for integrating the seniority lists, "the dispute may be submitted by *either party* for adjustment in accordance with section 13." (R.A. 10a (emphasis added)). It is clear from the words "either party" that the LPPs were intended to give only the carrier or the union the right to submit disputes under section 3 to arbitration. This self-evident interpretation of the LPPs is confirmed by the interpretation of the Civil Aeronautics Board ("CAB"), the government agency formerly responsible for imposing and interpreting LPPs. The CAB held that the standard LPP provision on seniority integration disputes, such as the one at issue here, gave only the carrier and the union the right to submit such disputes to arbitration. *See, e.g., Pan American-National*, Order No. 82-4-75, slip op. at 2 (CAB April 15, 1982) ("Only when the carrier and the employees' representatives disagree on seniority do we intrude, by ensuring that the parties arbitrate").

Here the two Merger Committees and Delta reached an agreement on how to integrate the seniority list.

(R.A. 3a). No dispute exists between ALPA and Delta on this matter. Since section 3 of the LPPs gives only the carrier and the union the right to submit a dispute to arbitration, petitioners clearly had no right to have the matter submitted to arbitration.

Similarly frivolous is petitioners' claim that the ALPA-Delta agreement was void because it was the result of coercion by the carrier. Uncontested evidence in the record established that the Western Merger Committee agreed to the method for integrating the seniority lists incorporated in the May 28, 1987 agreement not because it felt threatened but because it believed that the terms of the agreement were preferable to the possible result of arbitration. Moreover, to the extent that Delta made statements during the negotiations regarding its economic power, such statements were entirely appropriate to the negotiating process. As the district court aptly pointed out:

> [T]he courts have long recognized that, in the context of collective bargaining, economic threats to gain concessions at the bargaining table are entirely lawful. *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). It is well settled law that the process of labor negotiations is fundamentally one of "compromise and economic pressure." *NLRB v. Amax Coal Co.*, 453 U.S. 322, 336 (1981).

(P.A. 14a).[1]

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[1] Grasping for straws, petitioners argue that Delta's statements during negotiations were inappropriate because, according to petitioners, the Western Merger Committee was not engaged in collective bargaining and because the Western Merger Committee lacked any power to resist Delta's demands. Contrary to petitioners' assertion, the Western Merger Committee was indeed engaged in collective bargaining, pursuant to the ALPA Merger Policies. This collective bargaining culminated in a signed agreement—the May 28, 1987 agreement—to which the Western Merger Committee was a party. Nor was the Western Merger Committee powerless to resist Delta's demands. If the Western Merger Committee was dissatis-

Since petitioners clearly had no right to submit the integration of the seniority lists to arbitration, the Court of Appeals' decision does not offend federal policy favoring arbitration. Petitioners point out that "as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). Here, however, where there is no agreement to arbitrate after the parties reached agreement on the merits, there is *no doubt* that petitioners' dissatisfaction with the results of the negotiations did not give them the right to have an arbitrator rewrite the results.[2]

Moreover, petitioners' argument that RLA § 152, First, 45 U.S.C. § 152, First, entitled them to arbitration is also erroneous. The law is clear that federal courts may not recognize disputes between individual employees and carriers when, as in this case, the employees' union has an agreement with the carrier on the matter the employees dispute. *See Hendricks v. Airline Pilots Ass'n Int'l*, 696 F.2d 673, 675-77 (9th Cir. 1983); *see also Elgin, J. & E. Ry. v. Burley*, 325 U.S. 711, 728 (1945); *Order of R.R. Telegraphers v. Railway Express Agency*, 321 U.S. 342, 347 (1944).

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fied with the proposals offered by Delta or the Delta Merger Committee, it could have simply declined to agree to the proposals and proceeded to arbitration pursuant to the ALPA Merger Policies. (R.A. 4a, 8a-9a).

[2] The fact that the federal government no longer imposes and enforces LPPs adds no merit to petitioners' case. Simply because petitioners cannot address their frivolous claims to a government agency, it does not follow that a court must give the claims more consideration than they otherwise warrant.

II. THE COURT OF APPEALS FOUND THAT PETITIONERS' DUTY OF FAIR REPRESENTATION CLAIM WAS UNSUPPORTED BY ANY EVIDENCE

As part of their effort to undermine the validity of the seniority integration agreement, petitioners claimed below that ALPA violated its duty of fair representation ("DFR") towards them. Now petitioners argue that the Court of Appeals did not address their DFR claim. (Pet. at 16). However, the Court of Appeals held that petitioners' DFR claim was based on "only unsupported statements that provide no concrete evidence that ALPA breached the duty of fair representation." (R.A. 6a). The opinion continued:

> These statements are insufficient to survive the ALPA's summary judgment motion. The courts allow a union a "wide range of reasonableness" in the conduct of its representation of its members. It must be able to focus on the needs of its whole membership without undue fear of law suits from individual members. *Bautista v. Pan American World Airways*, 828 F.2d 546, 549 (9th Cir. 1987). The integration of a seniority list is a difficult undertaking because of the inevitability that some individual employees will be disadvantaged in comparison to others. In these circumstances, a union does not breach its duty of fair representation to others as long as it proceeds on some reasoned basis. *Clayton v. Republic Airlines*, 716 F.2d 729 (9th Cir. 1983). Therefore, the district court correctly granted summary judgment to ALPA on this issue.

(R.A. 6a).

The court also rejected petitioners' claim that "ALPA did not follow its own internal procedures for merging the seniority lists." (Pet. at 16). In this respect, the court found, contrary to petitioners' argument,

> ALPA's merger policies vests (sic) authority to determine an appropriate method of integration in

> Merger Committees consisting of pilots selected from the affected pilot groups. In this case the pilots representing Western and Delta reached an agreement on seniority issues. . . . The agreement was integrated into the Delta-ALPA collective bargaining agreement.

(R.A. 2a-3a). There is no basis for review of the court's ruling that ALPA satisfied its duty of fair representation.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 88-6182

D.C. No. CV 87-5725-RJK

PATRICK A. HERRING, JR.; RICHARD A. BREMS; JOSEPH HALEY; RONALD L. JENKINS, *et al.*,
Plaintiffs-Appellants,

v.

DELTA AIR LINES, INC.; AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Defendants-Appellees.

ORDER AND OPINION

Appeal from the United States District Court
for the Central District of California
Robert J. Kelleher, District Judge Presiding

Argued and Submitted
June 27, 1989—Pasadena, California

Memorandum Filed October 13, 1989
Order and Opinion Filed January 23, 1990

Before: Dorothy W. Nelson and Robert Boochever, Circuit Judge, and William D. Browning*, District Judge.

Opinion by Judge Nelson

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* Hon. William D. Browning, United States District Judge for the District of Arizona, sitting by designation.

ORDER

The Memorandum disposition filed October 13, 1989 is hereby redesignated as an authored opinion by Judge Nelson. The opinion has been modified.

OPINION

NELSON, Circuit Judge:

The plaintiffs-appellants, Patrick Herring and a group of Delta Airline pilots, appeal the district court's grant of summary judgment to defendants-appellees, Delta Air Lines, Inc., ("Delta") and Air Line Pilots Association, International, ("ALPA"). The plaintiffs-appellants also appeal the district court's denial of their motions to compel discovery, to strike portions of declarations, and to add more plaintiffs to their complaint. The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1337, and 2201. The appellate court has jurisdiction pursuant to 28 U.S.C. § 1291. We review grants of summary judgment *de novo*. *Eagle v. Am. Tel. & Tel. Co.*, 769 F.2d 541, 547 (9th Cir. 1985). We review denials of motions to compel discovery and to strike portions of declarations for abuse of discretion. *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986). We review the denial of leave to amend after a responsive pleading has been filed for an abuse of discretion. *Klamath-Lake Pharmaceutical Ass'n v. Klamath Medical Serv. Bureau*, 701 F.2d 1276, 1292 (9th Cir.), *cert. denied*, 464 U.S. 822 (1983).

In 1986, two airlines, Delta and Western Airlines, Inc., ("Western"), agreed to merge. As part of the merger agreement, Delta, the surviving entity, pledged to negotiate an integration of the two pilot seniority lists with ALPA, the pilots' union. Both Delta's pilots and Western's pilots were represented by ALPA. ALPA's merger policies vests authority to determine an appropriate method of integration in Merger Committees con-

sisting of pilots selected from the affected pilot groups. In this case the pilots representing Western and Delta reached an agreement on seniority issues.

Delta stated that the labor issues arising during implementation of the merger would be performed according to a system of industry practices known as labor protection provisions ("LPPs"). The integration of a seniority list involves much more than listing pilots according to the date that each began work. It encompasses such variables as the pilot's rank (*e.g.*, captain, first officer, etc.), and the kind of aircraft with which a pilot has had experience. Therefore, the allocation of employment costs and benefits created by a merger is a difficult one. After strenuous negotiations, management reached an agreement with the union. The agreement was incorporated into the Delta-ALPA collective bargaining agreement.

This agreement was acceptable to most of the pilots but was unacceptable to Herring and to a majority of the pilots who formerly had flown for Western. These pilots seek to overturn the agreement between Delta and ALPA and to send the matter to arbitration. They rest their claim on numerous grounds. The pilots allege that: 1) the appellees violated the LPPs; 2) the appellees violated the Railway Labor Act ("RLA"); 3) the appellees violated the Federal Arbitration Act ("FAA"); 4) the appellees breached a contract in which the appellants were third-party beneficiaries; and 5) ALPA did not fulfill its duty of fair representation ("DFR") to appellants. We affirm the judgments of the district court.

DISCUSSION

I. The Labor Protection Provisions Grounds

Originally, government regulatory agencies imposed LPPs as a condition of allowing mergers between railway systems. The LPPs served to protect the employees whose job security could be altered through a merger.

As similar consolidations occurred in the airline industry, the government standardized and imposed analogous LPPs. Following the Airline Deregulation Act of 1978, the government no longer imposed LPPs. However, the parties to a merger may adopt, as part of their agreement, these standardized provisions. In this merger, the parties voluntarily accepted these standardized provisions.

[1] Section 3 of LPPs governs the integration of seniority lists following a merger between two carriers. Section 3 provides:

> In so far as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13.

Section 3 does not provide any grounds for the appellants' argument. First, ALPA, not the appellants, is the representative of the pilots for collective bargaining purposes. Only the collective bargaining representatives (or the carrier) may submit a dispute between them over the integration of seniority lists to arbitration. Second, the pilot's representatives working on the merger agreement could have asked ALPA for an arbitrator if they could not agree. Third, the pilot representatives, however, did not request arbitration. Therefore, the LPPs provide no grounds for the appellants' action.

II. The Railway Labor Act Grounds

[2] The appellants claim that Delta and ALPA violated the RLA, 45 U.S.C. § 151a and 152 First and Second. These sections govern disputes between business organizations and labor unions that arise out of a col-

lective bargaining agreement. *Hendricks v. Airline Pilots Ass'n*, 696 F.2d 673 (9th Cir. 1983). The sections are not applicable because this case presents no dispute between Delta and ALPA. The appellants also allege that Delta engaged in intimidating and coercive behavior that violated section 152 Third. This section provides that employees have a right to select a collective bargaining representative without "interference, influence, or coercion" from the carrier. Section 152 Fourth prohibits a carrier from interfering with its employees' right to join or to refrain from joining a collective bargaining unit. ALPA is the only labor organization involved in this case and neither Delta nor ALPA attempted to influence the pilots to join or to leave ALPA or any other union. Therefore, these RLA sections cited by the appellants are inapplicable.

[3] The appellants also argue that Delta and ALPA violated the RLA by demoting Herring and that Delta violated the RLA by refusing to allow appellants to use Delta pilot mail-boxes to communicate regarding their protests. No private cause of action exists under the RLA for a group of employees who assert retaliatory conduct based upon employee activities which bear no relationship to establishing a union, or to employer activities that bear no relationship to undermining a union. *Klemens v. Air Line Pilots Ass'n, Int'l*, 736 F.2d 491, 496 (9th Cir.), *cert. denied*, 469 U.S. 1019 (1984). Therefore, these allegations, even if true, do not constitute a violation of the RLA in this situation.

III. The Federal Arbitration Grounds

Appellants also allege that the FAA, 9 U.S.C. §§ 1-14 required the appellees to arbitrate the seniority dispute. This statute is invoked only by a written agreement between the parties to arbitrate. Moreover, the statute specifically excludes from coverage "contracts of employment." Therefore, the appellants' reliance upon the FAA is misplaced.

IV. The Third Party Beneficiary Grounds

The appellants argued that they, as individual employees, are third party beneficiaries of a contract between Western and Delta to provide LPPs. Under this theory, Delta became liable to appellant when it breached the LPPs. This argument fails because Delta did not breach the LPPs, as we discussed above.

V. The Duty of Fair Representation Grounds

The appellants contend that ALPA breached its duty of fair representation ("DFR") owed to them under the RLA. They claim that the union breached this duty by acting in "hostile, arbitrary, and invidious, and discriminatory manner." The appellant base this argument on only unsupported statements that provide no concrete evidence that ALPA breached the duty of fair representation. These statements are insufficient to survive the ALPA's summary judgment motion. The courts allow a union a "wide range of reasonableness" in the conduct of its representation of its members. It must be able to focus on the needs of its whole membership without undue fear of law suits from individual members. *Bautista v. Pan American World Airways*, 828 F.2d 546, 549 (9th Cir. 1987). The integration of a seniority list is a difficult undertaking because of the inevitability that some individual employees will be disadvantaged in comparison to others. In these circumstances, a union does not breach its duty of fair representation to others as long as it proceeds on some reasoned basis. *Clayton v. Republic Airlines*, 716 F.2d 729 (9th Cir. 1983). Therefore, the district court correctly granted summary judgment to ALPA on this issue.

VI. The District Court's Exercise of Discretion on Appellants' Motions

The appellants' arguments that the district court abused its discretion when it denied appellants' motions to compel discovery, to strike portions of declarations,

and to add more plaintiffs is without merit. The records show that the appellants did not pursue discovery diligently before summary judgment. *Brae Transp., Inc. v. Coopers & Lybrand*, 790 F.2d 1539, 1443 (9th Cir. 1986). If the portions of the ALPA declarations to which appellants objected had been stricken more than sufficient evidence remained to justify summary judgment. *California Architectural Bldg. Products, Inc. v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987), *cert. denied*, 108 S.Ct 698 (1988). The addition of more plaintiffs would have been a futile act that would not have affected the issues underlying the grant of summary judgment. *Klamath-Lake Pharmaceutical Ass'n*, 701 F.2d at 1293. Therefore, the district court did not abuse its discretion in denying appellants' motions.

CONCLUSION

We AFFIRM the judgments of the district court.

AIR LINE PILOTS ASSOCIATION MERGER POLICIES AND RELATED EMPLOYEE PROTECTIVE PROVISIONS

DECEMBER 1985

* * * *

MERGER POLICY BOOKLET

DECEMBER 1, 1985

* * * *

SCOPE AND PURPOSE

The fundamental scope and purpose of this policy is to provide protection for the employment rights of flight deck operating crew members. This policy shall be applicable when it is learned of management's intentions to effect a temporary or permanent alteration of their route structure or operations by a merger, consolidation, unification, purchase, acquisition of control, pooling or any other similar arrangement, in whole or in part, of their separate airline facilities or any of the operations or services previously performed by them thorugh [sic] separate facilities or any alteration by deletion, suspension, sale, transfer, reallocation, farm out, abandonment, dismemberment, modification or substitution of another transportation carrier's service, or the formation of an Alter Ego company which may result in the transfer, displacement or dismissal of a flight deck operating crew member or a dilution or diminution of benefits attaching to his previous employment. Any of the above acts shall hereinafter be termed "merger."

* * * *

B. *Notice of Merger*

1. Upon learning of an intent to effect changes as outlined in the Scope and Purpose paragraph of this section, or when requested by an MEC Chairman, ALPA shall make reasonable assurances that affected employees will have access to appropriate employee

protective provisions which will allow the transfer of employment and seniority from one company to another.

2. When there is mutual agreement between the requesting parties and the President that the above provisions have been met, the President shall convene a meeting between the MEC Chairman and the Merger Representatives of each airline affected under the scope of this policy into joint session and orient the participants on the provisions of this policy.

3. Each MEC shall be required to have two merger representatives at all times. These representatives shall be elected by the MEC from their respective seniority list. Each MEC may, at its option, elect one additional committee member to assist the merger representatives.

4. In the event an MEC fails to elect merger representatives within 30 days following the policy initiation date, the President may, at his discretion and subject to an opportunity for the affected MEC to be heard by him, appoint any member of ALPA in good standing from the affected airline to fill any merger representative vacancy. The MEC or the President, whoever designates these representatives, will certify them as having complete and full authority to act for and in behalf of the flight deck operating crew members of their respective airlines for the purpose of compiling a single flight deck operating crew member seniority list.

5. The President and ALPA shall take all measures as may be applicable to ensure that the flight operations, equipment and routes of each company party to a merger shall remain separated until such time as the pilot seniority lists and employment agreements are merged or until the pilot groups affected mutually agree otherwise.

DELTA-WESTERN
LABOR PROTECTIVE PROVISIONS

Section 3. Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employes affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 13.

* * * *

Section 13. (a) In the event that any dispute or controversy (except as to matters arising under section 9) arises with respect to the protections provided herein, which cannot be settled by the parties within 20 days after the controversy arises, it may be referred by any party to an arbitrator selected from a panel of seven names furnished by the National Mediation Board for consideration and determination. Unless an extension of time is agreed upon in writing by all parties, the party desiring arbitration shall give the other party or parties and the National Mediation Board written notice of the party's decision to invoke arbitration no later than 45 days after the controversy arises. The parties shall select the arbitrator from such panel alternately striking names until only ones remains, and he shall serve as arbitrator. Expedited hearings and decisions will be expected, and a decision shall be rendered within 90 days after the controversy arises, unless an extension of time is mutually agreeable to all parties. The salary and expenses of the arbitrator shall be borne equally by the carrier and (i) the organization or organizations representing the employee or employees, or (ii) if unrepresented, the employee or employees, or group or groups of employees. The decision of the arbitrator shall be final and binding on the parties.

(b) The above condition shall not apply if the parties by mutual agreement determine that an alternative method for dispute settlement or an alternative procedure for selection of an arbitrator is appropriate in their particular dispute. No party shall be excused from complying with the above condition by reason of having suggested an alternative method or procedure, unless and until that alternative method or procedure shall have been agreed to by all the parties.